REMARKS/ARGUMENTS

Claims 1-7 and 15-20 are pending in the present application. Claims 6, 8-14 and 19 are canceled in this response; Claims 1, 7, 15, 16, and 20 are amended; Claims 21-27 are added. As the amendments incorporate the features of claim 6 into the independent claims and bring claims 7 and 20 into conformity of this amendment, support for the claim amendments can be found in the claims as originally filed. The new claims correspond to claims 21-25; thus, support for the new claims also can be found in the claims as originally filed. No new matter has been added. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 102, Asserted Anticipation

The examiner rejected claims 1-4 and 15-17 as anticipated by *Ayres*, Method, System, and Program for Selecting a Path to a Device To Use When Sending Data Requests to the Device, U.S. Patent 7,134,040 (November 7, 2006) (hereinafter "*Ayres*"). This rejection is respectfully traversed.

Applicants have incorporated the features of claim 6 into independent claims 1, 15, and 16. The examiner admits that claim 6 is not anticipated by *Ayres*, and *Ayres* does not actually anticipate claim 6. Therefore, *Ayres* does not anticipate claims 1, 15, and 16 as amended.

II. 35 U.S.C. § 103, Obviousness

The examiner rejects claims 5-7 and 18-20 as obvious over *Ayres* in view of *Freitas, et al.*, Method for Managing Concurrent Processes Using Dual Locking, U.S. Patent 6,401,110 (June 4, 2002) (hereinafter "*Freitas*"). This rejection is respectfully traversed.

Ayres does not qualify as prior art for purposes of obviousness rejections because *Ayres* qualifies for the exception provided under 35 U.S.C. §103(c). The earliest publication date of *Ayres* is October 23, 2003 (U.S. Patent Application Publication 2003/0200477). The present application filed on July 21, 2003. Therefore, *Ayres* can only qualify as a reference against the present application under 35 U.S.C. § 102(e). However, 35 U.S.C. § 103(c)(1) provides that:

> (c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Ayres and the present application have different inventive entities. *Ayres* qualifies as prior art only under subsection (e) of section 102. Applicants affirmatively state that at the time the claimed

invention was made the subject matter and the claimed invention were owned by the same person, IBM Corporation, or subject to an obligation of assignment to this same person.

Therefore, *Ayres* qualifies for the exception under 35 U.S.C. § 103(c). Accordingly, the examiner failed to state a *prima facie* obviousness rejection against claim 6. Because the features of claim 6 have been incorporated into the independent claims, no *prima facie* obviousness rejection can be stated against the independent claims as amended. No *prima facie* obviousness rejection can be stated against the dependent claims at least by virtue of their dependence on the amended independent claims. For this reason, the rejection is overcome.

III. New Claims 21-27

New claims 21-25 correspond to originally filed claims 2-4 and 7. New claims 26 and 27 correspond to originally filed claims 2 and 3. At least by virtue of their dependence on the amended dependent claims, new claims 21-27 should also be patentable over the cited references.

IV. Conclusion

The subject application is patentable over the cited references and should now be in condition for allowance. The examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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